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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[160229157-6781-02]

RIN 0648-BF84

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Trawl Fisheries; Amendment 103

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 103 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 103 and this final rule allow NMFS to reapportion unused Chinook salmon prohibited species catch (PSC) within and among specific trawl sectors in the Central and Western Gulf of Alaska (GOA), based on specific criteria and within specified limits. Amendment 103 and this final rule do not increase the current combined annual PSC limit of 32,500 Chinook salmon that applies to Central and Western GOA trawl sectors under the FMP.

Amendment 103 and this final rule promote more flexible management of GOA trawl Chinook salmon PSC, increase the likelihood that groundfish resources are more fully harvested, reduce the potential for fishery closures, and maintain the overall Chinook salmon PSC limits in the Central and Western GOA. Amendment 103 and this final rule

are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective on [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 103, the final Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis prepared for this action; the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for Amendment 97 to the FMP; and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for Amendment 93 to the FMP are available at <http://www.regulations.gov> or may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. All public comments submitted during the previous comment periods may be obtained from www.regulations.gov.

An electronic copy of the November 30, 2000, Biological Opinion on the effects of the Alaska groundfish fisheries on Endangered Species Act (ESA)-listed Chinook salmon is available at:

<http://alaskafisheries.noaa.gov/protectedresources/stellers/plb/default.htm>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by e-mail to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the U.S. Exclusive Economic Zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

NMFS published the Notice of Availability for Amendment 103 in the **Federal Register** on May 26, 2016 (81 FR 33456), with comments invited through July 25, 2016. NMFS published the proposed rule to implement Amendment 103 on June 16, 2016 (81 FR 39237), with comments invited through July 18, 2016. The Secretary of Commerce approved Amendment 103 on August 24, 2016. NMFS received two comment letters containing seven unique substantive comments on Amendment 103 and the proposed rule. A summary of these comments and the responses by NMFS are provided under the heading **Response to Comments** below.

The preamble to the proposed rule (81 FR 39237, June 16, 2016) contains a detailed review of the provisions of Amendment 103, the proposed regulations to implement Amendment 103, and the rationale for these regulations. The preamble to this final rule includes a brief description of 1) the Gulf of Alaska groundfish management areas and trawl fisheries affected by Amendment 103, 2) the management of Chinook salmon PSC limits in the GOA trawl fisheries, 3) the objectives and rationale for Amendment 103 and its implementing regulations, 4) the provisions of the Chinook

salmon PSC measures, 5) the changes from proposed rule to final, and 6) response to comments.

Management Areas and Fisheries Affected

Amendment 103 applies to federally-permitted vessels fishing for pollock and non-pollock groundfish with trawl gear (non-pollock trawl fisheries) in the Central and Western Reporting Areas of the GOA (Central and Western GOA). The Central and Western Reporting Areas, defined at § 679.2 and shown in Figure 3 to 50 CFR part 679, consist of the Central and Western Regulatory Areas in the EEZ (Statistical Areas 610, 620, and 630) and the adjacent waters of the State of Alaska (0 to 3 nm).

Vessels fishing for pollock and non-pollock groundfish are managed under annual total allowable catch (TAC) limits as recommended by the Council and approved by NMFS. Section 303(a) of the Magnuson-Stevens Act, the FMP, and regulations at 50 CFR 679.20(c) require that the Council recommend and NMFS specify an overfishing level (OFL), an acceptable biological catch (ABC), and a TAC for each stock or stock complex (i.e., each species or species group) of groundfish on an annual basis. The TAC is the annual catch limit for a species, derived from the ABC by considering social and economic factors and management uncertainty. The TACs for some species are subject to further apportionment on a seasonal basis and among vessels using specific types of gear in the GOA (see § 679.20(a)). NMFS closes directed (i.e., targeted) fisheries when a TAC or seasonal apportionment of TAC is reached, and restricts fishing in other fisheries that may incidentally take a species or species group approaching its OFL.

In the Central and Western GOA, trawl vessels target multiple groundfish species and are categorized by whether they participate in the directed fishery for pollock or other

non-pollock species. Non-pollock species include arrowtooth flounder, deep-water flatfish, flathead sole, Pacific cod, rex sole, rockfish, sablefish, shallow-water flatfish, and other groundfish species. Many of the vessels participating in the non-pollock trawl fisheries catch and retain multiple groundfish species during a single fishing trip. The fisheries and five trawl sectors participating in these fisheries are described in detail in Section 3.4.2 of the RIR, and that description is summarized here.

Pollock in the Central and Western GOA is allocated entirely to trawl catcher vessels (CVs) (see § 679.20(a)(6)(i)). This final rule defines the Central and Western GOA pollock trawl CV fisheries as the Central GOA and Western GOA pollock sectors.

The non-pollock fisheries in the Central and Western GOA are harvested by vessels using trawl and non-trawl gear (i.e., hook-and-line, jig, and pot gear). Amendment 103 and this final rule categorize the non-pollock trawl fisheries into three distinct sectors: the Trawl catcher/processor (C/P) sector; the Rockfish Program (CV) sector; and the Non-Rockfish Program CV sector.

The Trawl C/P sector includes trawl C/Ps that participate in a range of non-pollock groundfish fisheries in the Central and Western GOA such as arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, rockfish and sablefish.

The Rockfish Program CV sector includes any CV fishing for groundfish, other than pollock, with trawl gear in the Central GOA and operating under the authority of a Central GOA Rockfish Program cooperative quota permit. The Central GOA Rockfish Program is a limited access privilege program that authorizes vessels to fish for a variety of rockfish species, Pacific cod, and sablefish in the Central GOA. Additional detail on the Central GOA Rockfish Program and the Rockfish Program CV sector is provided in

Section 1.1 of the RIR, and the final rule implementing the Central GOA Rockfish Program (76 FR 81248, December 27, 2011).

The Non-Rockfish Program CV sector is defined as any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Central or Western Reporting Area of the GOA and not operating under the authority of a Central GOA Rockfish Program cooperative quota (CQ) permit assigned to the catcher vessel sector.

Management of Chinook Salmon PSC Limits in the GOA Trawl Fisheries

Trawl vessels that fish for pollock and non-pollock species tow nets through the water. Groundfish species that are caught in trawl nets can occur in the same locations as Chinook salmon. Consequently, Chinook salmon are incidentally caught in trawl nets as fishermen target groundfish. This incidental catch of unintended species in a groundfish fishery is referred to as “bycatch.”

Section 3 of the Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, and that are not sold or kept for personal use. Therefore, Chinook salmon caught in groundfish fisheries are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species is a concern of the Council and NMFS. National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act require the Council to recommend, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon are categorized as prohibited species under the FMP. The bycatch of Pacific salmon, and Chinook salmon in particular, is closely monitored and managed in the groundfish

fisheries off Alaska. In addition to salmon, other species, including steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring, are also classified as prohibited species catch (PSC) in the groundfish fisheries off Alaska. Fishermen must avoid salmon bycatch, and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program (see § 679.26), or returned to Federal waters as soon as practicable, with a minimum of injury, after an observer has determined the amount of salmon bycatch and collected any scientific data or biological samples.

Some Chinook salmon stocks in the Pacific Northwest, including Washington, Oregon, and Idaho, are listed as endangered or threatened under the ESA. Small amounts of these ESA-listed Chinook salmon are caught in GOA non-pollock trawl fisheries. The November 30, 2000, Biological Opinion on the effects of the Alaska groundfish fisheries on ESA-listed salmon of the Pacific Northwest included an incidental take statement (ITS) with an annual incidental take threshold of 40,000 Chinook salmon for the GOA groundfish fisheries. Exceeding the ITS for Chinook salmon triggers reinitiation of section 7 consultation under the ESA (see Section 3 of the RIR) (see **ADDRESSES**).

NMFS has implemented two programs to limit use of Chinook salmon PSC in the GOA trawl fisheries: Amendment 93 and Amendment 97 to the FMP. The combined annual GOA trawl PSC limits under Amendments 93 and 97 are 32,500 Chinook salmon. Amendment 93, implemented in August 2012, established an aggregate Chinook salmon PSC limit of 25,000 divided among the directed pollock fisheries in the Central and Western GOA (77 FR 42629, July 20, 2012). Amendment 93 establishes a Chinook salmon PSC limit of 18,316 salmon in the Central GOA, and 6,684 Chinook salmon in the Western GOA. Amendment 97, implemented on January 1, 2015, established a long-

term average annual PSC limit of 7,500 Chinook salmon for the Central and Western GOA non-pollock trawl fisheries (79 FR 71350, December 2, 2014). Under Amendment 97, this limit is divided among the three non-pollock trawl sectors: the Trawl C/P sector (3,600); the Rockfish Program CV sector (1,200); and the Non-Rockfish Program CV sector (2,700).

On May 3, 2015, NMFS prohibited directed fishing for groundfish by the Non-Rockfish Program CV sector after determining that the sector had reached its annual Chinook salmon PSC limit of 2,700 Chinook salmon. While Chinook salmon PSC limits were not exceeded at that time in other trawl sectors, existing Federal regulations did not allow NMFS to reapportion unused GOA Chinook salmon PSC limits from the trawl C/P and other CV trawl sectors to the Non-Rockfish Program CV sector. On August 10, 2015, NMFS implemented an emergency rule that provided the Non-Rockfish Program sector with up to 1,600 additional Chinook salmon PSC for the remainder of 2015 (80 CFR 47864, August 10, 2015). With this additional Chinook salmon PSC, the Non-Rockfish Program CV sector was able to resume fishing in 2015.

Amendment 103 and this Final Rule

As highlighted in the Council's purpose and need statement, Amendment 103 and this final rule 1) improve NMFS' inseason flexibility for reapportioning Chinook salmon PSC to minimize closures in the GOA, 2) are consistent with the goals of Amendments 93 and 97 and maintain current PSC limits, 3) do not exceed the incidental take threshold for ESA-listed Chinook salmon, and 4) balance competing social and economic interests. Amendment 103 and this final rule are necessary to increase the likelihood that

groundfish resources are more fully harvested and to reduce the potential for fishery closures.

Improve NMFS' Inseason Flexibility for Reapportioning Chinook Salmon PSC to Minimize Closures in the GOA

Amendment 103 and this final rule provide NMFS the flexibility to reapportion unused Chinook salmon PSC among fishery sectors during years of high or unusual Chinook salmon PSC that may occur in one or more fishery sectors without revising the individual sector PSC limits that are currently set in regulation. It accomplishes that by authorizing NMFS to reapportion unused Chinook salmon PSC from any of the five pollock or non-pollock sectors to any other sector, except the Trawl C/P sector. For example, unused Chinook salmon PSC could be reapportioned from the Central GOA pollock trawl sector to the Non-Rockfish Program CV sector. NMFS would only make such a reapportionment after NMFS has determined that the remaining amount of the Central GOA pollock trawl sector's PSC limit is greater than the amount of Chinook salmon PSC projected to be necessary to harvest the pollock TAC in the Central GOA pollock trawl sector for the remainder of the year.

Are Consistent with the Goals of Amendments 93 and 97 and Maintain Current PSC Limits

Amendment 103 and this final rule do not change the annual Chinook salmon PSC limits at § 679.21(h)(4) that were implemented under Amendments 93 and 97 because those PSC limits continue to be the most practicable Chinook salmon PSC limits for the Central and Western GOA trawl fisheries. They are practicable, in part, because they continue to apply the current incentives to minimize incidental catch of Chinook

salmon PSC in the five trawl sectors. Amendment 103 and this final rule continue to apply the incentives created by Amendments 93 and 97 because 1) the original PSC limits are set at an amount of PSC that is close to average historical use levels for most trawl sectors, 2) the amount of PSC that may be reapportioned among trawl sectors has been capped, and 3) potential receivers of Chinook salmon PSC reapportionments will continue to face uncertainty about whether and when NMFS will determine that unused Chinook salmon PSC is available to reapportion to them.

The potential still remains that a fishery will be closed if a Chinook salmon PSC limit is reached. Based on the historical use of Chinook salmon PSC, the Central and Western GOA pollock sectors are expected to be able to harvest their pollock TACs despite the Chinook salmon PSC limits established under Amendment 93. Of the five sectors covered by Amendments 93 and 97, two non-pollock sectors (Rockfish Program CV sector and Non-Rockfish Program CV sector) are more likely to be constrained by their Chinook salmon PSC limits because Amendment 97 set those two sectors' Chinook salmon PSC limits close to their levels of historic Chinook salmon PSC use (see the final rule for implementing Amendment 97 (79 FR 71350, December 2, 2014)). PSC limits established in Amendment 97 for the Trawl C/P sector provide a proportionally larger buffer measured from the sector's historical average Chinook salmon PSC use. The historic PSC use by the Trawl C/P sector indicates that this sector is not likely to exceed its current Amendment 97 PSC limit (Section 3.8 of the RIR). Therefore, trawl C/Ps are excluded from the additional reapportionments provided to other sectors in this final rule.

Amendment 103 and this final rule establish a cap on the amount of unused Chinook salmon PSC that may be reapportioned to a sector in a single year (§

679.21(h)(5)(iv)). Reapportionments of unused Chinook salmon PSC may not exceed 3,342 Chinook salmon to vessels participating in the Western GOA pollock sector, 9,158 Chinook salmon to vessels participating in the Central GOA pollock sector, 600 Chinook salmon to the Rockfish Program CV sector, and 1,350 Chinook salmon to the Non-Rockfish Program CV sector. By capping the amount of unused Chinook PSC that can be received by a sector through a reapportionment, this final rule balances the goal of flexibility to reapportion unused PSC with the goal to minimize PSC, consistent with National Standard 9 of the Magnuson-Stevens Act.

This final rule also acknowledges that NMFS's ability to reapportion unused Chinook salmon PSC does not provide certainty for any pollock or non-pollock sector that a fishery will remain open. NMFS's ability to reapportion unused Chinook PSC within the caps designated in this final rule does not guarantee that unused Chinook salmon PSC will be available for reapportionment for a particular sector in a given year. Chinook salmon PSC encounter levels are highly variable across years. A sector is likely to reach its PSC limit in years when other GOA trawl sectors are experiencing similarly high Chinook salmon PSC levels, thus reducing the availability of reapportionments among those sectors. NMFS inseason managers will not necessarily reapportion unused Chinook salmon PSC to a closed sector. Although Amendment 103 and this final rule could prevent the closure of a sector during a particular year, the possibility exists that fishing opportunities might be forgone for at least part of that year. Reapportionment of unused Chinook salmon PSC is most likely to be from the Central or Western GOA pollock sectors, and most of the Chinook salmon PSC use in those two sectors occurs later in the year. NMFS will not make large reapportionments from either of these

pollock sectors to a non-pollock sector until NMFS is able to reasonably project that a pollock sector's Chinook salmon PSC use will be below its PSC limit for the remainder of the year.

Section 3.8 of the RIR identifies the potential for small increases in the annual use of Chinook salmon PSC under Amendment 103 and this final rule, relative to the status quo, due to the increased flexibility to reapportion unused Chinook salmon PSC. The Council and NMFS concluded that because any reapportionment must be debited from a sector, the potential aggregate increase in the use of Chinook PSC across all five sectors under this final rule is likely be small and is consistent with the goals of Amendments 93 and 97. The RIR estimates the maximum aggregate increase in Chinook salmon PSC due to reapportionment of unused PSC from all five sectors will be no more than 2,000 Chinook salmon in any year, or approximately 6 percent of the current combined 32,500 Chinook salmon PSC limit for the Central and Western GOA trawl fisheries.

Do Not Exceed the Incidental Take Threshold for ESA-Listed Chinook Salmon

Under Amendment 103 and this final rule, trawl fisheries will continue to avoid exceeding the annual Chinook salmon ESA threshold of 40,000 Chinook salmon that was identified in the incidental take statement accompanying the November 30, 2000, Biological Opinion (see **ADDRESSES**). Establishing a limit on the amount of Chinook salmon PSC that may be taken on an annual basis in the pollock and non-pollock trawl fisheries in the Central and Western GOA will accomplish that goal. This final rule will continue to limit the combined annual Chinook salmon PSC in the Central and Western

GOA trawl fisheries to 32,500 Chinook salmon, much less than the 40,000 Chinook salmon threshold.

Balance Competing Social and Economic Interests (National Standards)

As discussed in this preamble and the preamble to the proposed rule (81 FR 39237, June 16, 2016), the Council concluded, and NMFS agrees, that Amendment 103 and this final rule reduce the potential for Chinook salmon PSC limits implemented under Amendments 93 and 97 to cause adverse social and economic effects from a fishery closure and, at the same time, continue to minimize Chinook salmon PSC to the extent practicable. Reapportioning unused Chinook salmon PSC to a sector to avoid a closure or to reopen a fishery may prevent negative impacts to harvesters, processors, and GOA coastal communities that depend on that groundfish resource. Amendment 103 and this final rule are consistent with the National Standards 1, 5, 6, 8, and 9 (see Section 4.1 of the RIR). Amendment 103 and this final rule increase the likelihood that groundfish TACs will be achieved, allow for management actions to adjust to the variation in Chinook salmon PSC rates among sectors within a year, and decrease the likelihood that harvesters, processors, and communities will be adversely affected by fishery closures due to Chinook salmon PSC limits. Those objectives are consistent with National Standards 1, 5, 6, 8, and 9.

Reorganization of Regulations for Chinook Salmon PSC Limits

This final rule consolidates under § 679.21(h) the regulations for Chinook salmon PSC limits in the GOA pollock and non-pollock trawl fisheries that are currently found at § 679.21(h) and (i), respectively. This final rule consolidates under § 679.21(h) all the current Chinook salmon PSC limits and management measures as well as the regulations

to authorize the reapportionment of Chinook salmon PSC limits among the GOA pollock and non-pollock trawl sectors. Consolidation of the Chinook salmon PSC limit regulations under § 679.21(h) will not result in any technical or substantive changes to the existing procedures, policies, and requirements that were implemented under Amendments 93 and 97. Consolidation allows for more efficient, clear, and concise regulations applicable to the entities regulated by this final rule.

Changes from Proposed to Final Rule

NMFS has not made any changes to the final rule or to the Regulatory Flexibility Act analysis.

Responses to Comments

NMFS received one letter from the U.S. Fish and Wildlife Service (USFWS) acknowledging its review of the proposed rule, but USFWS submitted no comments. NMFS also received a comment letter from the representative of the GOA trawl fishing industry interest group expressing support for the proposed rule and providing additional comments.

Comment 1: The commenter noted that the proposed rule provides additional flexibility to GOA pollock and non-pollock trawl fisheries and recommends that the final rule be implemented. The commenter stated that the proposed rule will increase the likelihood that groundfish resources are more fully harvested, reduce the potential for fishery closures and resulting adverse socioeconomic impacts on harvesters, processors, and communities, and yet still maintain the overall Chinook salmon PSC limits in the Central and Western GOA.

Response: NMFS agrees that the added flexibility for reapportioning Chinook salmon PSC in Amendment 103 and this final rule will reduce the potential for fishery closures in the GOA pollock and non-pollock fisheries.

Comment 2: The commenter agreed with NMFS's assessment in the preamble to the proposed rule that fishery participants are unlikely to reduce their ongoing effort to avoid Chinook salmon as a result of Amendment 103 and the proposed rule.

Response: NMFS acknowledges this comment.

Comment 3: The commenter sought clarification of the dates in the proposed rule for providing NMFS with the discretion to reapportion Chinook salmon PSC from the Rockfish Program CV Sector to the Non-Rockfish Program CV sector on October 1. The proposed rule would have provided discretion for the Regional Administrator to reallocate any unused Chinook salmon PSC from the Rockfish Program CV Sector, in excess of 150 Chinook salmon, to the Non-Rockfish Program CV Sector on October 1. As described in the Analysis, the Council's intent for this provision and the overall intent of Amendment 103 and the proposed rule is to provide the Regional Administrator the discretion to reapportion unused Chinook salmon PSC from the Rockfish Program CV sector to the Non-Rockfish Program CV sector either before, on, or after October 1. The commenter recommended revising text at § 679.21(h)(5)(i) to delete "On October 1" to provide the Regional Administrator greater flexibility regarding when to reapportion PSC as intended by the Council.

Response: NMFS agrees that a principal goal of Amendment 103 and this final rule is to increase the flexibility for inseason reapportionments of unused Chinook salmon PSC from the Rockfish Program CV sector to the Non-Rockfish Program CV

sector, or to the Central GOA pollock or Western GOA pollock sectors, throughout the fishing year. This final rule accomplishes that goal since it provides NMFS with the discretion to reapportion unused Chinook salmon PSC from the Rockfish Program CV sector at any time during the year with two limitations. First, § 679.21(h)(5)(iv) imposes caps on the amount of Chinook salmon PSC that NMFS may reapportion. Second, § 679.21(h)(5)(i) and (ii) provide that, if on October 1, there are fewer than 150 Chinook salmon PSC available to the Rockfish Program catcher vessel sector, NMFS may not reapportion any of that PSC until November 15. Accordingly, between October 1 and November 15 of each year, NMFS has more limited discretion with regard to reapportionments from the Rockfish Program catcher vessel sector than compared to other times of the year. Prior to October 1, there is no express requirement that NMFS leave at least 150 Chinook salmon PSC for the Rockfish Program catcher vessel sector's use. However, NMFS will authorize a reapportionment after taking into consideration the amount of Chinook salmon PSC necessary to enable the transferor to prosecute its directed fisheries for the year.

The preamble to the proposed rule may not have been clear on the scope of NMFS's discretion to make a reapportionment prior to October 1. The text to Amendment 103 and the regulatory text, however, are clear, and this response provides additional background in order to remove any potential ambiguity.

Accordingly, with regard to the request to delete the October 1 and November 15 dates from the rule, NMFS declines to do so, as the dates are established in the FMP. In addition, in this Council-initiated action, the Council modified the provisions, but left the dates intact. Under section 304(a)(3) of the Magnuson-Stevens Act, NMFS must approve,

disapprove, or partially approve the proposed amendment. Because the Council did not amend the dates, NMFS has no basis for deleting those dates from the FMP Amendment or its implementing regulations.

Comment 4: The provision at § 679.21(h)(5)(ii) of the proposed rule, which requires NMFS to reserve 150 Chinook salmon PSC for the Rockfish Program CV sector until November 15, is not consistent with the intent of this amendment to provide NMFS with flexibility to reapportion PSC as necessary after consultation with the industry. NMFS should have the discretion to reapportion any amount of PSC to a fishery at any time during the fishing year for consistency with the overall purpose and need for this action.

Response: NMFS addressed this comment in its response to Comment 3.

Comment 5: The commenter states that the cap on the amount of Chinook salmon PSC that can be reapportioned to any trawl sector based on 50 percent of that sector's initial PSC limit as defined at § 679.21(h)(4) limits flexibility and is unnecessarily restrictive.

Response: The amounts of Chinook salmon PSC that may be received in a reapportionment are itemized for each sector at § 679.21(h)(5)(iv). The preambles to the proposed rule and this final rule provide a thorough discussion of why the Council recommended and NMFS is implementing this final rule with sector-level PSC reapportionment caps.

The Council and NMFS examined a range of cap limits, prior to selecting a cap based on 50 percent of a sector's Chinook salmon PSC limit. The Council and NMFS determined that a cap larger than 50 percent of a sector's Chinook salmon PSC limit may

reduce the incentive to minimize bycatch to the extent practicable. For example, with higher caps, or no cap on reapportionments, some sectors could significantly exceed their historical average use of Chinook salmon PSC. As noted earlier in this preamble, Amendment 103 and this rule were not intended to remove the Chinook salmon PSC limits established under Amendments 93 and 97. Rather, they are designed to provide additional flexibility while maintaining PSC levels reflective of each sector's historic use. The Council and NMFS also considered a range of cap limits that were lower than 50 percent of a sector's Chinook salmon PSC limit and concluded that a smaller cap could preclude the reapportionment of sufficient amounts of Chinook salmon PSC to avoid fishery closures, particularly for sectors such as the Rockfish Program CV sector that have small initial Chinook salmon PSC limits (See Analysis, Section 3.8). For the reasons previously discussed in this preamble and the preamble to the proposed rule for this action (81 FR 39237, June 16, 2016), none of these alternative cap limits had the potential to increase the flexibility for reapportioning Chinook salmon PSC within pollock and non-pollock sectors, while achieving the objectives of this action to reduce bycatch of Chinook salmon to the extent practicable.

Comment 6: The commenter stated that in the GOA pollock trawl fishery, Chinook salmon PSC estimates are derived from a census of observed vessels whereas in the non-pollock trawl fisheries, Chinook salmon PSC estimates are based on randomly selected samples taken by observers at sea. Due to the sampling design applied to the non-pollock fisheries, a non-pollock fishery sector's Chinook salmon PSC estimates could be derived from a single vessel's use of Chinook salmon PSC during a specific trip which may not be representative of the Chinook salmon PSC by other vessels in that

sector. The commenter asserted that NMFS should modify observer sampling protocols in the non-pollock trawl fisheries and employ a census method on all observed vessels.

Response: PSC sampling and catch accounting methods for the non-pollock trawl fisheries are outside the scope of Amendment 103 and this final rule. The observer sampling methods for Chinook salmon PSC in the GOA trawl fisheries were established by Amendment 93 and Amendment 97 and are described in the preambles to both of those final rules.

Comment 7: The commenter stated that Amendment 103 does not provide all of the tools needed to fully utilize allocated Chinook salmon PSC or minimize bycatch to the extent practicable, and that a regulated catch share program that explicitly allocates target species and bycatch species such as salmon would accomplish these objectives.

Response: The consideration of alternatives and options for a GOA trawl bycatch management program is outside the scope of this action, which is limited to reapportionment of unused Chinook salmon PSC within and among specific trawl sectors in the GOA, within certain parameters. The Council is currently discussing alternatives for a GOA trawl bycatch management program that may provide additional tools to manage Chinook salmon PSC in the future. NMFS published a notice of intent to prepare an environmental impact statement for a new bycatch management program for GOA groundfish trawl fisheries in the **Federal Register** on July 28, 2016 (81 FR 49614). We encourage the commenter to provide input on GOA trawl bycatch management through that process.

Classification

The NMFS Assistant Administrator has determined that Amendment 103 and this final rule are necessary for the conservation and management of the groundfish fishery, and that they are consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS website at <http://alaskafisheries.noaa.gov>.

Final Regulatory Flexibility Analysis

This FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments, NMFS’ responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed

rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: 1) a statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements, and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and the reason the agency rejected each of the other significant alternatives that affect the impact on small entities.

Need for, and Objectives of, this Rule

A statement of the need for, and objectives of, this rule is included earlier in this preamble and is not repeated here.

Summary of Significant Issues Raised during Public Comment

NMFS published the proposed rule to implement Amendment 103 on June 16, 2016 (81 FR 39237). An IRFA was prepared and summarized in the **Classification** section of the preamble to the proposed rule. The comment period on the proposed rule closed on July 18, 2016. NMFS received two letters of public comment on the proposed rule and Amendment 103. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. No comments were received on the IRFA. No changes were made to this rule or the RFA analysis as a result of public comments.

Number and Description of Directly Regulated Small Entities

The action directly regulates federally permitted or licensed entities that participate in harvesting groundfish from the Federal or State-managed parallel pollock and non-pollock trawl fisheries of the Central and Western GOA. These entities include vessels participating in five trawl sectors (Central GOA pollock, Western GOA pollock, Trawl C/P, Rockfish CV, and Non-Rockfish Program CV) in the Central and Western GOA.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (80 FR 81194). The North American Industry Classification System (NAICS) code for commercial fishing is NAICS 11411 for RFA compliance purposes only. The \$11 million standard became effective on July 1, 2016, and replaces the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016 (80 FR 81194).

Taking this change into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities. Revising the size standard from \$20.5 million to \$11.0 million reduces the number of small entities for this action. Further, the new size standard does not affect the decision to prepare a FRFA as opposed to a certification for this regulatory action.

Fishing vessels are considered small entities for this FRFA if their total annual gross revenues, from all their activities combined, are less than \$11.0 million. Further, the SBA requires consideration of affiliations among entities for the purpose of assessing if an entity is small. Trawl vessels engaged in one of the trawl sectors regulated by this action and affiliated with an American Fisheries Act pollock cooperative, Amendment 80 cooperative, or Central GOA Rockfish Program cooperative are large entities if gross annual revenues of the affiliate exceed \$11.0 million.

Based on 2013 and 2014 data, this FRFA identifies 10 CVs that are defined as small entities. Twenty CVs were affiliated with a catch share program and their affiliate exceeded the \$11.0 million annual gross revenue standard. All of the C/Ps regulated by this final rule are affiliated through one or more catch share program, and no trawl C/P qualifies as a small entity. Therefore, 10 small entities are directly regulated by this final rule. As noted above, all 10 small entities will benefit from, and will not be adversely impacted by this action.

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule does not revise any existing recordkeeping, reporting, or other compliance requirements.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

This action partially relieves a restriction on small entities by providing additional management flexibility for reapportioning Chinook salmon PSC limits in the GOA trawl fishery, and thus is a benefit to these small entities. During consideration of this action, the Council and NMFS evaluated a number of alternatives including 1) no action; 2) authorizing reapportionment of unused Chinook salmon PSC limit to the trawl C/P sector; and 3) limiting the percent of Chinook salmon PSC that can be reapportioned to or from a sector based on the amount of the Chinook salmon PSC initially assigned to a sector (between 10 percent and 50 percent of the initial Chinook salmon PSC limit). For the reasons previously discussed in this preamble and the preamble to the proposed rule for this action (81 FR 39237, June 16, 2016), none of these alternatives had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. Section 2 of the RIR discusses alternatives considered and eliminated from detailed analysis (see **ADDRESSES**).

The no action alternative fails to provide tools to reapportion Chinook salmon PSC limits to pollock and non-pollock trawl sectors to avoid fishery closures, and thus fails to meet the principal objective of this final rule. Providing reapportionment of Chinook salmon PSC with lower or higher caps than those selected would either reduce incentives to minimize PSC if the cap were too low, or eliminate the effectiveness of reapportionment if the cap is too high. Based on the best available scientific data and information, none of the alternatives except the preferred alternative have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable law

(as reflected in this action), while minimizing significant adverse economic impact on small entities.

Collection-of-Information Requirements

This rule reorganizes regulatory text that contains a previously approved collection-of-information requirement subject to the Paperwork Reduction Act (PRA), and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0515. This rule makes no revisions to the collection-of-information requirements. The eLandings at-sea production report or eLandings groundfish landing report are mentioned in this final rule, but the individual responses for each requirement is not changed.

Public reporting burden for the eLandings landing report is estimated to average ten minutes per individual response and for the eLandings production report is estimated to average five minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information

displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 6, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679-- FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108–447; Pub. L. 111-281.

2. In § 679.7, revise paragraph (b)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) * * *

(8) *Prohibitions specific to salmon discard in the Western and Central Reporting Areas of the GOA directed fisheries for groundfish.* Fail to comply with any requirements of § 679.21(h).

* * * * *

3. In § 679.21:

a. Revise paragraph (h); and

b. Remove paragraph (i) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(h) *GOA Chinook Salmon PSC Management—(1) Applicability.* Regulations in this paragraph apply to trawl vessels participating in the directed fishery for groundfish in the Western and Central reporting areas of the GOA and processors receiving deliveries from these vessels.

(2) *GOA Chinook salmon PSC limits for the pollock sectors (fisheries).* (i) The annual PSC limit for vessels participating in the directed fishery for pollock in the Western reporting area of the GOA is 6,684 Chinook salmon.

(ii) The annual PSC limit for vessels participating in the directed fishery for pollock in the Central reporting area of the GOA is 18,316 Chinook salmon.

(3) *GOA non-pollock trawl sectors.* For the purposes of accounting for the annual Chinook salmon PSC limits at paragraph (h)(4)(i) of this section, the non-pollock trawl sectors are:

(i) *Trawl catcher/processor sector.* The Trawl catcher/processor sector is any catcher/processor vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central GOA reporting area and processing that groundfish at sea;

(ii) *Rockfish Program catcher vessel sector.* The Rockfish Program catcher vessel sector is any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central reporting area of the GOA and operating under the authority of a Central GOA Rockfish Program CQ permit assigned to the catcher vessel sector; and

(iii) *Non-Rockfish Program catcher vessel sector.* The Non-Rockfish Program catcher vessel sector is any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central reporting area of the GOA and not operating under the authority of a Central GOA Rockfish Program CQ permit assigned to the catcher vessel sector.

(4) *GOA Chinook salmon PSC limits for non-pollock trawl fisheries.* (i) The annual Chinook salmon PSC limits in the Western and Central reporting areas of the GOA for the sectors defined in paragraph (h)(3) of this section are as follows:

For the following sectors defined in § 679.21(h)(3)...	The total Chinook salmon PSC limit in each calendar year is...	Unless, the use of the Chinook salmon PSC limit for that sector in a calendar year does not exceed...	If so, in the following calendar year, the Chinook salmon PSC limit for that sector will be...
(A) Trawl catcher/processor sector	3,600	3,120	4,080
(B) Rockfish Program catcher vessel sector	1,200	N/A	
(C) Non-Rockfish Program catcher vessel sector	2,700	2,340	3,060

(ii) For the Trawl catcher/processor sector defined in paragraph (h)(3)(i) of this section:

(A) The seasonal PSC limit prior to June 1 is 2,376 Chinook salmon if the annual Chinook salmon PSC limit is 3,600. The seasonal PSC limit prior to June 1 is 2,693 Chinook salmon if the annual Chinook salmon PSC limit is 4,080.

(B) The number of Chinook salmon PSC available on June 1 through the remainder of the calendar year is the annual Chinook salmon PSC limit specified for the Trawl catcher/processor sector minus the number of Chinook salmon used by that sector prior to June 1 and any Chinook salmon PSC limit reapportioned to another sector specified at paragraph (h)(5)(iii) of this section prior to June 1.

(5) *Inseason reapportionment of Chinook salmon PSC limits.* (i) On October 1, the Regional Administrator may reallocate any unused Chinook salmon PSC available to the Rockfish Program catcher vessel sector, defined in paragraph (h)(3)(ii) of this section, in excess of 150 Chinook salmon to the Non-Rockfish Program catcher vessel sector, but not to exceed the Non-Rockfish Program catcher vessel sector's limit on Chinook salmon PSC reapportionment as defined in paragraph (h)(5)(iv)(D) of this section.

(ii) On November 15, the Regional Administrator may reallocate all remaining Chinook salmon PSC available to the Rockfish Program catcher vessel sector, defined in paragraph (h)(3)(ii) of this section, to the Non-Rockfish Program catcher vessel sector, but not to exceed the Non-Rockfish Program catcher vessel sector's limit on Chinook salmon PSC reapportionment as defined in paragraph (h)(5)(iv)(D) of this section.

(iii) Any Chinook salmon PSC limit in paragraphs (h)(2) or (h)(4) of this section projected by the Regional Administrator to be unused during the remainder of the fishing year may be reapportioned subject to the Chinook salmon PSC limits in paragraphs (h)(5)(iv)(A) through (D) of this section for the remainder of the fishing year. NMFS will publish notification in the **Federal Register** announcing any Chinook salmon PSC limit reapportionments in the GOA.

(iv) On an annual basis, NMFS shall not reapportion an amount of unused Chinook salmon PSC greater than the following amounts:

(A) 3,342 Chinook salmon to vessels participating in the directed fishery for pollock in the Western reporting area of the GOA;

(B) 9,158 Chinook salmon to vessels participating in the directed fishery for pollock in the Central reporting area of the GOA;

(C) 600 Chinook salmon to the Rockfish Program catcher vessel sector defined in paragraph (h)(3)(ii) of this section; and

(D) 1,350 Chinook salmon to the Non-Rockfish Program catcher vessel sector defined in paragraph (h)(3)(iii) of this section.

(6) *Salmon retention.* (i) The operator of a vessel, including but not limited to a catcher vessel or tender, must retain all salmon until delivered to a processing facility.

(ii) The operator of a catcher/processor or the owner and manager of a shoreside processor or SFP receiving groundfish deliveries from trawl vessels must retain all salmon until the number of salmon by species has been accurately recorded in the eLandings at-sea production report or eLandings groundfish landing report.

(iii) The owner and manager of a shoreside processor or SFP receiving pollock deliveries must, if an observer is present, retain all salmon until the observer is provided the opportunity to count the number of salmon and collect scientific data or biological samples from the salmon.

(iv) The operator of a catcher/processor must retain all salmon until an observer is provided the opportunity to collect scientific data or biological samples from the salmon.

(7) *Salmon discard*. Except for salmon under the PSD program defined in § 679.26, all salmon must be discarded after the requirements at paragraph (h)(6)(ii) or (h)(6)(iii) of this section have been met.

(8) *GOA Chinook salmon PSC closures*. If, during the fishing year, the Regional Administrator determines that:

(i) Vessels participating in the directed fishery for pollock in the Western reporting area or Central reporting area of the GOA will reach the applicable Chinook salmon PSC limit specified for that reporting area under paragraph (h)(2) of this section or the applicable limit following any reapportionment under paragraph (h)(5) of this section, NMFS will publish notification in the **Federal Register** closing the applicable regulatory area to directed fishing for pollock;

(ii) Vessels in a sector defined in paragraph (h)(3) of this section will reach the applicable Chinook salmon PSC limit specified for that sector under paragraph (h)(4)(i) of this section or the applicable limit following any reapportionment under paragraph (h)(5) of this section, NMFS will publish notification in the **Federal Register** closing directed fishing for all groundfish species, other than pollock, with trawl gear in the Western and Central reporting areas of the GOA for that sector; or

(iii) Vessels in the Trawl catcher/processor sector defined in paragraph (h)(3)(i) of this section will reach the seasonal Chinook salmon PSC limit specified at paragraph (h)(4)(ii)(A) of this section prior to June 1, NMFS will publish notification in the **Federal Register** closing directed fishing for all groundfish species, other than pollock, with trawl gear in the Western and Central reporting areas of the GOA for all vessels in the Trawl catcher/processor sector until June 1. Directed fishing for groundfish species, other than pollock will reopen on June 1 for the Trawl catcher/processor sector defined in paragraph (h)(3)(i) of this section with the Chinook salmon PSC limit determined at paragraph (h)(4)(ii)(B) of this section unless NMFS determines that the amount of Chinook salmon PSC available to the sector is insufficient to allow the sector to fish and not exceed its annual Chinook salmon PSC limit.

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